IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION Nos 192 to 195 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHU TRADE-LINK PVT. LTD.,
MADHU SALES AND MARKETING PRIVATE LIMITED,
MIRABH PHARMACEUTICALS PRIVATE LIMITED

WITH

MADHU RESEARCH AND DEVELOPMENT CENTRE
PRIVATE LIMITED.

Appearance:
1. COMPANY PETITION No. 192 to 195 of 2004
MRS SWATI SOPARKAR for Petitioners
MR JITENDRA MALKAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 26/04/2005

COMMON ORAL JUDGEMENT

These are four petitions filed by the four petitioner Companies for sanction of the scheme of Amalgamation of first three Companies (the Transferor Companies) with Madhu Research and Development Centre Private Limited (the Transferee Company) under Section 391 read with Section 394 of the Companies Act, 1956.

2. All the four petitioner Companies are private limited Companies. Since the Transferor and Transferee Companies belong to the same group of Management and they are in the similar line of business, it is thought proper to amalgamate these Companies for achieving operational synergies. The amalgamated Company would have a larger capital base and assets base. The amalgamation would help to minimise operative and administrative costs. It would also facilitate optimum use of the resources and effective management control systems. This will be in the mutual advantage of the shareholders and Creditors of all the companies.

3. Accordingly, the Board of Directors of the Transferor and Transferee Companies resolved that subject to such approvals of the Equity and Preference Shareholders and Unsecured Creditors (there being no Secured Creditors as on date); and subject to such directions and sanctions of this Court as may be required in law, and subject to such consents and permissions of the Central Government and other authorities as may be necessary, the scheme of Amalgamation be made between the Transferor Companies and the Transferee Company on the broad basis referred to in the Scheme of Amalgamation which is annexed at Exh. C to each of these petitions.

4. The proposed Scheme was approved unanimously by the Equity Shareholders, Preference Shareholders and Unsecured Creditors of all the Transferor Companies through the consent letters which were put on record along with respective applications. There are no Secured Creditors of any of the petitioner Companies. The Equity Shareholders of the Transferee Company also approved the scheme through their consent letters. Hence, the meetings of the shareholders and creditors were not required to be held and accordingly they were dispensed with vide the order passed on 24.08.2004 in Company Application Nos. 287,288,289 and 290 of 2004.

5. After the petitions were admitted, the same were duly advertised in the Newspapers viz. Indian Express Ahmedabad edition and Saurashtra Samachar having circulation in Bhavnagar dated 30.09.2004 and the publication in the Government Gazette was dispensed with as directed in the order dated 14.09.2004. Affidavit of publication alongwith newspaper cuttings is duly filed. No one has come forward with any objections to the said petitions even after the publication.

6. Notice of the petition of the petitioner Transferor Companies were served upon the Official Liquidator attached to this Court. By his report dated 11.04.2005, it is observed that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of their members or to the public interest. He, however, drew attention to the observation made by the Chartered Accountant in his report. The Chartered Accountant has observed in his report that on the basis of the information and according to the explanation given to them and the Books of Account and records maintained as prescribed under the Companies Act, 1956 produced for their verification along with relevant documents and subject to the observation at para 8 regarding issue of Debentures, they were of the view that the acts and transactions of the Company were conducted within the objects mentioned in the Memorandum of Association of the Company and that the affairs of the Companies have not been conducted in a manner prejudicial to the interest of its members, creditors, lenders and public. In para 8 of the report, the Chartered Accountant has observed that as per the audited accounts for all the five years, Company, inter alia, has raised Unsecured loan of Rs.130 Lacs by issuing 0% Unsecured Redeemable Optionally Fully Convertible Debentures to "holding Company". However, Company has clarified that there was no "holding Company" upto 31.03.2004 and the noting had crept in by a typographical error. Loan of Rs. 20,000/- is from two Directors of the Company. The Company has accumulated losses of Rs.149,21,764/- as on 31.03.2004.

7. With regard to these observations made by the Chartered Accountant in his report, the Court has asked further clarification from Mrs. Swati Soparkar, learned advocate appearing for the petitioners in all these petitions and it has been submitted that so far as Madhu

Trade Link Pvt. Ltd. is concerned, the Company was incorporated on 25.09.1996. In the year 1996-97 out of the proceeds of shares and optional fully convertible debentures invested in 15,00,000 shares of M/s. Unicorn Organics Ltd. (listed Company) for total amount of Rs.150 Lacs. During the year 1997-98 to 2001-02, there was no activity carried out by the Company. She has further submitted that since M/s. Unicorn Organics Ltd. became BIFR, the value of investment became almost nil and therefore shares were sold @ Rs.0.10 per share and accordingly company has incurred loss of Rs.148.50 Lacs which is shown as long term capital loss in the profit and loss account for the year 2002-03.

8. Similarly, with regard to Madhu Sales & Marketing Pvt. Ltd., Mrs. Swati Soparkar has submitted that the Company was incorporated on 25.09.1996. In the year 1996-97 out of the proceeds of shares and optional fully convertible debentures invested in 15,00,000 shares of M/s. Unicorn Organics Ltd. (listed Company) for total amount of Rs.150 Lacs. During the year 1997-98 to 2001-02, there was no activity carried out by the Company. She has further submitted that since M/s. Unicorn Organics Ltd. became BIFR, the value of investment became almost nil and therefore shares were sold @ Rs.0.10 per share and accordingly company has incurred loss of Rs.148.50 Lacs which is shown as long term capital loss in the profit and loss account for the year 2002-03. Barring the above observation which is also explained by the petitioner Companies, there is no other objection and the Chartered Accountant as well as the Official Liquidator have come to the conclusion that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members, creditors, lenders and public.

9. Notice of the petition has been served upon the Central Government. Though repeatedly the matter was adjourned for securing the presence of Mr. J.M. Malkan, learned Asst. Solicitor General appearing for the Central Government, neither he remained present on any of the occasions nor he has placed the communication received from the Regional Director on record of this Court. On the contrary, Mrs. Swati Soparkar, learned advocate appearing for the petitioners has produced on record zerox copy of the letter dated 21.02.2005 addressed by the Registrar of Companies to Mr. J.M. Malkan along with the letter from Regional Director addressed to the Registrar of Companies wherein it is

stated that he has examined the Scheme of Amalgamation and it has been decided by him not to oppose the Scheme and the matter may be left to this Court to decide on merits. Since no objection has been raised by the Regional Director nor even learned Asst. Solicitor General is present for raising any objection against the present Scheme, the Court, therefore, takes the view that the Central Government has no objection against the sanction being granted by this Court to the Scheme of Amalgamation.

10. After having heard the learned advocate appearing for the petitioners and after having gone through the petitions and submissions, the Court is satisfied that the Amalgamation would be in the interest of Companies and their members and Creditors. The Court is also of the view that the same is not contrary to the public interest in any respect. Accordingly, the prayers made in terms of para 15 (A) of all the petitions are hereby granted.

11. The petitions are accordingly disposed of.

[K.A. PUJ, J.]

#Savariya#

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